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SENATE BILL 204

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

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AN ACT

RELATING TO FIREWORKS; AUTHORIZING MUNICIPALITIES AND COUNTIES
TO REGULATE THE SALE, POSSESSION OR USE OF FIREWORKS; AMENDING
AND REPEALING SECTIONS OF THE NMSA 1978; DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-2C-2 NMSA 1978 (being Laws 1989,
Chapter 346, Section 2, as amended) is amended to read:

"60-2C-2. DEFINITIONS. --As used in the Fireworks
Licensing and Safety Act:

A. "chaser" means a paper or cardboard tube venting
out the fuse end of the tube that contains no more than twenty
grams of chemical composition and travels along the ground,
often producing a whistling effect or other noise; an explosive
composition not to exceed fifty milligrams may be included to

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1 produce a report;

2 B. "chemical composition" includes all pyrotechnic
3 and explosive composition contained in a fireworks device, but
4 does not include inert materials such as clay used for plugs or
5 organic matter such as rice hulls used for density control;

6 C. "cone fountain" means a cardboard or heavy paper
7 cone containing no more than fifty grams of pyrotechnic
8 composition that has the same effect as a cylindrical fountain.
9 When more than one cone is mounted on a common base, total
10 pyrotechnic composition shall not exceed two hundred grams;

11 D. "crackling device" means a sphere or paper tube
12 that contains no more than twenty grams of pyrotechnic
13 composition that produces a flash of light and a mild, audible
14 crackling effect upon ignition, which effect is not considered
15 to be an explosion. Crackling devices are not subject to the
16 fifty-milligram limit of firecrackers;

17 E. "cylindrical fountain" means a cylindrical tube
18 containing not more than seventy-five grams of pyrotechnic
19 composition that produces a shower of colored sparks and
20 sometimes a whistling effect or smoke. The device may be
21 provided with a spike for insertion into the ground or a wood
22 or plastic base for placing on the ground or a wood or
23 cardboard handle to be hand held. When more than one tube is
24 mounted on a common base, total pyrotechnic composition shall
25 not exceed two hundred grams;

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1 F. "display distributor" means [~~any~~] a person, firm
2 or corporation selling display fireworks;

3 G. "display fireworks" means devices primarily
4 intended for commercial displays that are designed to produce
5 visible or audible effects by combustion, deflagration or
6 detonation, including salutes containing more than one hundred
7 thirty milligrams of explosive composition; aerial shells
8 containing more than forty grams of chemical composition
9 exclusive of lift charge; and other exhibition display items
10 that exceed the limits for permissible fireworks;

11 H. "distributor" means [~~any~~] a person, firm or
12 corporation selling fireworks to wholesalers and retailers for
13 resale;

14 I. "explosive composition" means [~~any~~] a chemical
15 compound or mixture, the primary purpose of which is to
16 function by explosion, producing an audible effect in a
17 fireworks device;

18 J. "firecracker" means a small, paper-wrapped or
19 cardboard tube containing no more than fifty milligrams of
20 explosive composition that produces noise and a flash of light;
21 provided that firecrackers used in aerial devices may contain
22 up to one hundred thirty milligrams of explosive composition
23 per report;

24 K. "fireworks" means devices intended to produce a
25 visible or audible effect by combustion, deflagration or

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1 detonation and are categorized as "permissible fireworks" or
2 "display fireworks";

3 L. "flitter sparkler" means a narrow paper tube
4 attached to a stick or wire and filled with no more than five
5 grams of pyrotechnic composition that produces color and sparks
6 upon ignition and the paper at one end of the tube is ignited
7 to make the device function;

8 M "ground spinner" means a small, rapidly spinning
9 device containing no more than twenty grams of pyrotechnic
10 composition venting out an orifice usually on the side of the
11 tube that when ignited produces a shower of sparks and color.
12 "Ground spinner" is similar in operation to a wheel, but is
13 intended to be placed flat on the ground and ignited;

14 N. "helicopter" or "aerial spinner" means a tube
15 containing no more than twenty grams of chemical composition
16 with a propeller or blade attached that spins rapidly as it
17 rises into the air with a visible or audible effect sometimes
18 produced at or near the height of flight;

19 O. "illuminating torch" means a cylindrical tube
20 containing no more than one hundred grams of pyrotechnic
21 composition that produces a colored flame upon ignition and may
22 be spiked, based or hand held. When more than one tube is
23 mounted on a common base, total pyrotechnic composition shall
24 not exceed two hundred grams;

25 P. "manufacturer" means ~~any~~ a person, firm or

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1 corporation engaged in the manufacture of fireworks;

2 Q. "mine" or "shell" means a heavy cardboard or
3 paper tube usually attached to a wooden or plastic base and
4 containing no more than forty grams of chemical composition
5 plus not more than twenty grams of lift charge per tube that
6 individually expels pellets of pressed pyrotechnic composition
7 that burn with bright color in a star effect, or other devices
8 propelled into the air, and that contains components producing
9 reports containing a maximum one hundred thirty milligrams of
10 explosive composition per report. A mine may contain more than
11 one tube, but the tubes must fire in sequence upon ignition of
12 one external fuse, and the total chemical composition,
13 including lift charges, of a multiple tube device shall not
14 exceed two hundred grams;

15 R. "missile-type rocket" means a device similar to
16 a stick-type rocket in size, composition and effect that uses
17 fins rather than a stick for guidance and stability and that
18 contains no more than twenty grams of chemical composition;

19 S. "permissible fireworks" means fireworks legal
20 for sale to and use in New Mexico by the general public;

21 T. "pyrotechnic composition" means a chemical
22 mixture that on burning and without explosion produces visible
23 or brilliant displays or bright lights or whistles or motion;

24 U. "retailer" means ~~any~~ a person, firm or
25 corporation purchasing fireworks for resale to consumers;

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1 V. "roman candle" means a heavy paper or cardboard
2 tube containing no more than twenty grams of chemical
3 composition that individually expels pellets of pressed
4 pyrotechnic composition that burn with bright color in a star
5 effect;

6 W. "specialty retailer" means [~~any~~] a person, firm
7 or corporation purchasing permissible fireworks for year-round
8 resale in permanent retail stores whose primary business is
9 tourism;

10 X. "stick-type rocket" means a cylindrical tube
11 containing no more than twenty grams of chemical composition
12 with a wooden stick attached for guidance and stability that
13 rises into the air upon ignition and produces a burst of color
14 or sound at or near the height of flight;

15 Y. "toy smoke device" means a small plastic or
16 paper item containing no more than one hundred grams of
17 pyrotechnic composition that produces white or colored smoke as
18 the primary effect;

19 Z. "wheel" means a pyrotechnic device that is made
20 to attach to a post or other surface and that revolves,
21 producing a shower of color and sparks and sometimes a
22 whistling effect, and that may have one or more drivers, each
23 of which contains no more than sixty grams of pyrotechnic
24 composition and the total wheel contains no more than two
25 hundred grams total pyrotechnic composition; and

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1 AA. "wholesaler" means ~~[any]~~ a person, firm or
2 corporation purchasing fireworks for resale to retailers ~~[and~~

3 ~~BB. "wildlands" means any lands covered wholly or~~
4 ~~in part by timber, brush or native grass]. "~~

5 Section 2. Section 60-2C-7 NMSA 1978 (being Laws 1989,
6 Chapter 346, Section 7, as amended) is amended to read:

7 "60-2C-7. PERMISSIBLE FIREWORKS. --

8 A. Permissible fireworks are:

9 (1) ground and hand-held sparkling and smoke
10 devices:

- 11 (a) cone fountains;
- 12 (b) crackling devices;
- 13 (c) cylindrical fountains;
- 14 (d) flitter sparklers;
- 15 (e) ground spinners;
- 16 (f) illuminating torches;
- 17 (g) toy smoke devices; and
- 18 (h) wheels;

19 (2) aerial devices:

- 20 (a) aerial spinners;
- 21 (b) helicopters;
- 22 (c) mines;
- 23 (d) missile-type rockets; ~~[and]~~
- 24 (e) roman candles;
- 25 (f) shells; and

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1 (g) stick-type rockets, except as
2 provided in Subsection B of this section; and

3 (3) ground audible devices:

4 (a) chasers; and

5 (b) firecrackers.

6 B. Stick-type rockets having a tube less than a
7 [~~one-quarter-inch~~] one-fourth-inch inside diameter are not
8 permissible fireworks.

9 C. A municipality or county [~~shall not~~] may by
10 ordinance regulate and prohibit the sale, possession or use of
11 any permissible firework [~~except aerial devices and ground~~
12 ~~audible devices~~] within its jurisdiction. "

13 Section 3. Section 60-2C-8 NMSA 1978 (being Laws 1989,
14 Chapter 346, Section 8, as amended) is amended to read:

15 "60-2C-8. RETAIL SALES OR STORAGE OF FIREWORKS--REGULATED
16 ACTIVITIES. --

17 A. [~~No~~] Fireworks may not be sold at retail without
18 a retail permit. The permit shall be at the location where the
19 retail sale takes place.

20 B. It is unlawful to offer for sale or to sell
21 [~~any~~] fireworks to children under the age of sixteen years or
22 to [~~any~~] an intoxicated person.

23 C. At all places where fireworks are stored, sold
24 or displayed, the words "NO SMOKING" shall be posted in letters
25 at least four inches in height. Smoking, open flames and any

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1 ignition source are prohibited within twenty-five feet of [~~any~~]
2 fireworks stock.

3 D. [~~No~~] Fireworks shall not be stored, kept, sold
4 or discharged within fifty feet of [~~any~~] a gasoline pump or
5 gasoline bulk station or [~~any~~] a building in which gasoline or
6 volatile liquids are sold in quantities in excess of one
7 gallon, except in stores where cleaners, paints and oils are
8 handled in sealed containers only.

9 E. All fireworks permittees and licensees shall
10 keep and maintain upon the premises a fire extinguisher bearing
11 an underwriters laboratories incorporated rated capacity of at
12 least five-pound ABC per five hundred square feet of space used
13 for fireworks sales or storage.

14 F. A sales clerk who is at least sixteen years of
15 age shall be on duty to serve consumers at the time of purchase
16 or delivery. Permissible fireworks may be offered for sale
17 only at state-permitted or state-licensed retail locations.

18 G. [~~No~~] Fireworks shall not be discharged within
19 one hundred fifty feet of [~~any~~] a fireworks retail sales
20 location.

21 H. [~~No~~] Fireworks shall not be sold or used on
22 state forest land.

23 I. [~~No~~] A person shall
24 ignite [~~any~~] fireworks within a motor vehicle or throw
25 fireworks from a motor vehicle, nor shall [~~any~~] a person place

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1 or throw ~~[any]~~ ignited ~~[article of]~~ fireworks into or at a
2 motor vehicle or at or near ~~[any]~~ a person or group of people.

3 J. ~~[Any]~~ Fireworks devices that are readily
4 accessible to handling by consumers or purchasers in a retail
5 sales location shall have their exposed fuses protected in a
6 manner to protect against accidental ignition of an item by a
7 spark, cigarette ash or other ignition source. If the fuse is
8 a thread-wrapped safety fuse which has been coated with a
9 nonflammable coating, only the outside end of the safety fuse
10 shall be covered. If the fuse is not a safety fuse, then the
11 entire fuse shall be covered.

12 K. Permissible fireworks may be sold at retail
13 between June 20 and July 6 of each year, ~~[and]~~ six days
14 preceding and including new year's day, ~~[and]~~ three days
15 preceding and including Chinese new year, the sixteenth of
16 September and cinco de Mayo of each year, except that
17 permissible fireworks may be sold all year in permanent retail
18 stores whose primary business is tourism, where not prohibited
19 by municipal or county ordinance. "

20 Section 4. REPEAL. --Section 60-2C-8.1 NMSA 1978 (being
21 Laws 1997, Chapter 17, Section 9, as amended) is repealed.

22 Section 5. EMERGENCY. --It is necessary for the public
23 peace, health and safety that this act take effect immediately.